



Congress of the United States House of Representatives

June 14, 2000

The Honorable George W. Bush
Governor
The State of Texas
PO Box 12428
Austin, Texas 78711-2428

Dear Governor Bush:

I write to ask you to place a moratorium on executions in Texas pending a full and complete study of the adequacy of legal representation and the sufficiency of legal protection for the accused in capital cases. The death penalty is a necessary tool in appropriate cases, but it can serve as a deterrent to future crime only if the public has full and absolute confidence that innocent or improperly sentenced persons are not executed. Our sense of justice and human rights requires that we be absolutely certain that the death penalty is applied properly.

Recent reports in the media have highlighted mistakes made in capital cases, both in Texas and in other states around the country. As you know, concerns with the administration of the death penalty and the adequacy of legal representation prompted Governor George Ryan of Illinois to declare a moratorium on executions.

I was pleased with your recent decision to pardon a man wrongly convicted and sentenced to 99 years in prison. His release came, however, after he served 16 years in jail. With recent efforts to expedite executions and remove many bases for appeal, it is possible that similarly situated convicts on death row -- equally innocent -- could be executed before we discovered or considered the exculpatory evidence.

With the advances in forensic technology, and DNA analysis in particular, we have the best opportunity in our history to rule out, or at least have serious doubts concerning, the possibility that a defendant/convict in fact committed the crime in question. Your decision to postpone the execution of Ricky Nolen McGinn was the right one. We need to make sure. But we need that assurance in every single case, not just in those who by one reason or another catch our attention. We need to consider ways to make DNA testing more available, and the plan offered by Senator Rodney Ellis deserves your full attention and that of the Legislature.

Every defendant has the fundamental right to be defended by competent counsel, and it is the duty of the state to appoint that counsel when the defendant is indigent. We must ensure that

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defendants, and especially capital defendants, have not only the bare minimum, but truly competent counsel who will thoroughly investigate the case and present, if appropriate, a vigorous defense. As reported, the case of Gary Graham, whose execution date is fast approaching, raises serious questions about the way we appoint counsel in capital cases. Good lawyering can make the difference between conviction and exoneration, between prison and death. We must trust the adversarial system to convict and sentence appropriately, but that system only works when the adversaries -- the lawyers on each side -- are doing their best job.

Finally, the reported case of Walter Quijano, whose death sentence may have turned on obviously inappropriate racial stereotyping, raises yet another set of questions: whether the state's "expert" witnesses are making biased statements that improperly influence the sentencing of convicts. The fact that a single psychologist potentially could have injected bias into this many cases raises numerous questions on how other forms of bias and inaccuracy could have come into the system. The Attorney General's decision to support a new sentencing hearing was right. We must now, however, review all cases for possible bias.

I know you would want to make certain without any doubts that the system of justice administration in capital cases is working, not just adequately, but as flawlessly as humanly possible. We must reassure the public and ourselves that the death penalty is being used properly. That requires, in my mind, that we pause the fast pace of executions to review every capital case.

Persons who commit heinous crimes should, in appropriate cases, be given the death penalty. I fully understand the plea of victims for the swift administration of justice. But justice requires that we know for sure that we are applying the ultimate earthly penalty fairly and properly. I am not sure that we are doing so, and I therefore call upon you to suspend executions in Texas, form a balanced commission of experts to review how Texas handles capital cases, and to make recommendations for necessary changes. The possibility that our state may execute an innocent person, when we could make changes to avoid it, requires our immediate attention.

Sincerely,


Ciro D. Rodriguez
Member of Congress